

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

XO California, Inc.,

Complainant,

vs.

NorthPoint Communications, Inc.,

Defendant.

Case 01-03-041
(Filed March 28, 2001)**O P I N I O N****1. Summary**

Complainant XO California, Inc. (XO) and defendant NorthPoint Communications, Inc. (NorthPoint) jointly move for dismissal of this proceeding. They ask that the Commission in its order state the procedure that should be followed by any carrier that intends to go out of business or withdraw from the provision of a telecommunications service. While we grant the motion for dismissal of this complaint case, we refer the procedural request to two pending rulemaking proceedings. This proceeding is closed.

2. Background

On March 28, 2001, XO filed a motion for an emergency order to prevent the imminent shutdown of NorthPoint, a supplier of Digital Subscriber Line (DSL) services. NorthPoint in January 2001 had filed for bankruptcy protection,

and on March 22, 2001, it announced that it would cease operations because it had not obtained needed financing. Meanwhile, AT&T California, Inc., won Bankruptcy Court approval to purchase NorthPoint's DSL assets. AT&T's purchase, however, did not include the service agreements under which NorthPoint provided DSL connectivity to Internet Service Providers (ISPs) like XO.

Following a telephone conference call with interested parties on March 29, 2001, and a hearing on March 30, 2001, Commissioner Carl Wood on March 30 issued a ruling on complainant's motion for emergency relief. The ruling noted that 40,000 customers of DSL services in California were likely to suffer irreparable harm if NorthPoint discontinued service without providing time for customers to make alternative arrangements for their DSL connections. In the ruling, and at hearing, Commissioner Wood enjoined NorthPoint from discontinuing DSL service to California customers without notice and established procedures intended to minimize disruption of service. On April 3, 2001, the Commission confirmed Commissioner Wood's ruling in Decision (D.) 01-04-008.

3. Discussion

In requesting dismissal of this complaint case, the parties ask that the Commission set forth requirements that it expects telecommunications carriers to follow if they anticipate going out of business or withdrawing from the provision of a service. Those requirements would derive from Pub. Util. Code § 451, which requires that public utilities maintain just and reasonable service, and General Order 96-A, which provides that no public utility shall withdraw from service without first having obtained approval of the Commission.

XO and NorthPoint suggest that a telecommunications carrier intending to cease operations or provision of a service should be required to take at least the following steps:

- Notify the Commission's Telecommunication Division and request approval of the contemplated withdrawal.
- Provide all affected customers and carriers at least 30 days' advance notice in writing of the proposed termination of service.
- Provide a blanket letter of authorization and all other necessary documentation to other carriers to facilitate the transfer of circuits necessary to fulfill a customer's request for continuation of service with a succeeding carrier.

In addition, XO and NorthPoint urge that any other carrier that has been involved in the provision of service to customers of the exiting carrier be required to:

- Cooperate in sharing information and creating procedures adequate for transfer of a customer from the exiting carrier to a succeeding carrier with minimum disruption of service to the customer.
- Effect a direct one-step ("lift and lay") transfer of service that prevents end user loops or other facilities previously used by the exiting carrier from returning to the "pool" of unused facilities and equipment, ensuring that the facilities will be available for use by succeeding carriers.

In comments in response to the joint motion, The Utility Reform Network (TURN) observes that an insolvent carrier is loathe to admit that it is on the verge of shutting down and is unwilling to take steps to transfer its customers until the last possible moment, when it is too late to avoid disruption.

TURN suggests that notice of imminent shutdown by a carrier should be triggered by an indicator of severe economic distress, i.e., insolvency, filing of bankruptcy, or actual acknowledgement that the carrier will cease operations

within 45 days. When a triggering event occurs, a carrier would be required to give notice that it is economically distressed and may soon be forced to cease operation.

TURN also urges that the Commission consider establishing an emergency customer transfer fund that would help pay to keep networks live while transferring customers to avoid interruption of service. TURN also urges that the Commission consider participating in future bankruptcy cases as a representative of the public interest of consumers.

The California ISP Association also submitted comments, urging the Commission to adopt the proposed stipulated terms and conditions addressing continuity of service for customers of advanced services.

4. Conclusion

These are valuable suggestions that deserve consideration by this Commission, by the Telecommunications Division, and by the telecommunications industry in general. However, a complaint case like this one is not the forum for such consideration because only a limited number of parties are participating, and our ruling herein would be binding only on the complainant and the defendant. For that reason, we will refer these proposals to two pending rulemaking proceedings, Rulemaking (R.) 00-02-004 (Rulemaking to establish consumer rights and consumer protection rules applicable to all telecommunications utilities) and R.98-07-038 (Rulemaking for purposes of revising General Order 96-A). In both of these proceedings, we are considering issues arising when a utility transfers assets or withdraws from service.

Meanwhile, dismissal of this complaint case is in the public interest, and the requested order should be granted.

Our action today does not foreclose further proceedings by this Commission against North Point and its principals. In terminating service without the approval of this Commission and without reasonable notice to subscribers, NorthPoint and its principals violated the spirit and the letter of existing law, including Pub. Util. Code § 451 and G.O. 96-A. Had those rules been followed during NorthPoint's withdrawal from service, the disruption of service to customers could have been minimized.

We take this occasion to remind all exiting carriers of their obligation to cooperate with affected customers and other carriers to minimize disruption of service. Accordingly, our order today requires service of this decision on all parties in R.00-02-004 and R.98-07-038.

The scope of this proceeding is set forth in the complaint and answer. While a hearing was conducted on the emergency motion, the parties have agreed that a hearing on the complaint itself is not necessary. We confirm that Commissioner Wood is the presiding officer.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. XO on March 28, 2001, filed this complaint and a motion for an emergency order to prevent the imminent shutdown of NorthPoint.
2. At hearing on March 30, 2001, Commissioner Wood established procedures intended to minimize disruption of service to California customers and issued a ruling enjoining NorthPoint's shutdown without reasonable notice to customers.
3. The Commission confirmed Commissioner Wood's ruling in D.01-04-008.

4. XO and NorthPoint on May 1, 2001, jointly moved for dismissal of this proceeding.

Conclusions of Law

1. Dismissal of this proceeding is in the public interest, and the requested order should be granted, effective immediately.

2. Proposals by the parties and by TURN for further development of requirements to govern exiting carriers should be referred to the rulemaking proceedings in R.00-02-004 and R.98-07-038.

O R D E R

IT IS ORDERED that:

1. The Joint Motion by XO California, Inc. (XO) and NorthPoint Communications, Inc. (NorthPoint) for Entry of Order of Dismissal on Stipulated Terms and Conditions is granted.

2. Proposals of XO, NorthPoint, The Utility Reform Network and the California ISP Association urging further development of requirements to govern carriers that intend to discontinue service may be raised in Commission Rulemaking (R.) 00-02-004 and R.98-07-038.

3. This decision shall be served on all parties in R.00-02-004 and R.98-07-038.

4. Case 01-03-041 is closed.

This order is effective today.

Dated _____, at San Francisco, California.